

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

ELIZABETH McCOY
Respondent

Case Nos.: I-00-40930
I-00-40922

FINAL ORDER

I. Introduction

On June 29, 2001, the Government served a Notice of Infraction (No. 00-40930) upon Respondent Elizabeth McCoy, alleging that she violated two regulations governing the operation of community residence facilities. The Notice of Infraction alleged that Ms. McCoy violated 22 DCMR 3402.3, which requires annual health certifications for employees of such facilities, and 22 DCMR 3402.4, which requires a facility to maintain accurate personnel records. The Notice of Infraction alleged that the violations occurred on February 7, 2001 at 5002 North Capitol Street, N.W. It sought a fine of \$100 for the alleged violation of § 3402.3 and a fine of \$50 for the alleged violation of § 3402.4.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code § 6-2715, now codified as D.C. Code § 2-1802.05 (2001 ed.)). Accordingly, on August 1, 2001, this administrative court issued an order finding Respondent in default, assessing the

statutory penalty of \$150 authorized by D.C. Code § 6-2704(a)(2)(A), now codified as D.C. Code § 2-1801.04 (2001 ed.), and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Code § 6-2712(f), now codified as D.C. Code § 2-1802.02(f) (2001 ed.).

The Government then served a second Notice of Infraction (No. 00-40922) on September 19, 2001. Respondent also did not answer that Notice within twenty days of service. Accordingly, on November 14, 2001, a Final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and assessing total penalties of \$300 pursuant to D.C. Code §§ 6-2704(a)(2)(A) and 6-2704(a)(2)(B), now codified as D.C. Code §§ 2-1801.04(a)(2)(A) and 2-1801.04(a)(2)(B) (2001 ed.). The Final Notice of Default also set December 12, 2001 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at that hearing to contest liability, fines, penalties or fees. Copies of both the first and second Notices of Infraction were attached to the Final Notice of Default.

Louis Woodard, the inspector who issued the Notices of Infraction, appeared at the hearing on behalf of the Government. There was no appearance for the Respondent. Based upon the testimony of the Government's witness, my evaluation of his credibility, the documents admitted into evidence, and the entire record in this matter, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Respondent, Elizabeth McCoy, owns and operates a community residence facility for elderly persons at 5002 North Capitol Street, N.W. On February 7, 2001, Louis Woodard, an inspector employed by the Department of Health visited the facility to conduct a follow-up inspection. Mr. Woodard previously visited the facility on September 6, 2000. The purpose of his February 7 visit was to ascertain whether Ms. McCoy had corrected certain conditions that he had called to her attention during his earlier inspection.

On February 7, the facility did not have current (*i.e.*, completed within one year or less) medical certifications for two employees stating that they were in good health and free of communicable diseases. The facility also did not have personnel records for three employees.

Both Notices of Infraction were sent to Respondent by first class mail, as evidenced by the certificates of service signed by the Government's representative. The Postal Service has not returned either Notice of Infraction to the Government. The November 14, 2001 order setting the hearing date and enclosing copies of the Notices of Infraction was delivered to Respondent on November 20, 2001, as evidenced by the delivery confirmation receipt in the record.

III. Conclusions of Law

A. Notice to Respondent

Because the Notices of Infraction were mailed to Respondent and have not been returned by the Postal Service, and because Respondent actually received the November 14 order, she

received adequate notice of the charges and of the hearing date, as required by the Due Process Clause and the Civil Infractions Act. D.C. Code §§ 6-2711 and 6-2715, now codified as D.C. Code §§ 2-1802.01 and 2-1802.05 (2001 ed.). *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).

B. Respondent's Violations

Section 3402.3 provides, in relevant part: "All persons employed in a community residence facility . . . shall be certified annually by the examining physician to be in good health and free of communicable diseases as defined in chapter 2 of this title." The evidence shows that the facility did not have current certificates of good health for two of its employees on February 7, and therefore, that it violated § 3402.3 on that date.

Section 3402.4 provides: "Accurate personnel records shall be maintained by each community residence facility." The required contents of such records are specified in 22 DCMR 3402.5, and they include an employee's name, address, social security number, professional license or certification number, if any, and a resume of the employee's training, experience and previous employment. Because the facility had no such records for two employees on February 7, it violated § 3402.4 on that date.

C. Fines and Penalties

A violation of § 3402.3 is a Class 3 infraction, for which a fine of \$100 is prescribed for a first offense. 16 DCMR 3219.2(jj); 16 DCMR 3201.1(b). A violation of § 3402.4 is a Class 4

infraction, which carries a fine of \$50 for a first offense. 16 DCMR 3219.3(b); 16 DCMR 3201.1(b). The evidence established a separate violation of §§ 3402.3 and 3402.4 for each employee for whom the required documentation was missing. The Government only charged a single violation of each section, however, and I therefore will impose only one fine for each section that Respondent violated. Accordingly, Respondent's total fine is \$150.

The Civil Infractions Act, D.C. Code §§ 6-2712(f) and 6-2715, now codified as D.C. Code §§ 2-1802.02(f) and 2-1802.05 (2001 ed.), requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Code §§ 6-2704(a)(2)(A), 6-2712(f), now codified as D.C. Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f) (2001 ed.). If a recipient fails to answer a second Notice of Infraction without good cause, the penalty doubles. D.C. Code §§ 6-2704(a)(2)(B), 6-2712(f), now codified as D.C. Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f) (2001 ed.). Because Respondent introduced no evidence of her reasons for failing to answer the Notices of Infraction, there is no basis for concluding that she had good cause for those failures. Accordingly, I will impose the penalty of \$300 required by statute in addition to the fine.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____
day of _____, 2001:

ORDERED, that Respondent shall pay a total of **FOUR HUNDRED FIFTY DOLLARS (\$450.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Code §§ 6-2714 and 6-2715, now codified as D.C. Code §§ 2-1802.04 and 2-1802.05 (2001 ed.)); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to section 203(i)(1) of the Civil Infractions Act, D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001, now codified as D.C. Code § 2-1802.03(i)(1) (2001 ed.) ; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), now codified as D.C. Code § 2-1802.03(f) (2001 ed.), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Code § 6-2713(i), now codified as D.C. Code § 2-1802.03(i) (2001 ed.) and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(7), now codified as D.C. Code § 6-1801.03(b)(7) (2001 ed.).

/s/ **12/17/01**

John P. Dean
Administrative Judge